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IN THE

Supreme Court of the United States

October Term, 1949

No. 44

HEMAN MARION SWEATT,
Petitioner,

v.

THEOPHILIS SHICKEL PAINTER *et al.*,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA

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On Petition for Writ of Certiorari to the Supreme Court of the State of Texas

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MOTION ON BEHALF OF THE FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

THE FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA moves the Court for leave to file the brief *amicus curiae* hereto annexed, in support of the petition for a writ of certiorari. This brief is filed with the written consent of petitioner, but the written consent of the Honorable Price Daniels, the Attorney General of the State of Texas, has not been obtained although requested.

Dated, September 22, 1949.

THE FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA

By: CHARLES H. TUTTLE
Counsel

IN THE

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MEMORANDUM OF THE FEDERAL COUNCIL OF THE CHURCHES OF CHRIST IN AMERICA, AS *AMICUS CURIAE*, IN SUPPORT OF PETITION

Interest of The Federal Council *

This brief is filed on behalf of The Federal Council of the Churches of Christ in America, because of its profound interest in and concern with the legal, ethical and religious

* The Federal Council of the Churches of Christ in America is composed of the following religious bodies: National Baptist Convention, Northern Baptist Convention, Church of the Brethren, General Council of Congregational Christian Churches, Czech-Moravian Brethren, International Convention of Disciples of Christ, Evangelical and Reformed Church, Evangelical United Brethren Church, Five Years Meeting of the Friends in America, Religious Society of the Friends of Philadelphia and Vicinity, The Methodist Church, African M. E. Church, African M. E. Zion Church, Colored M. E. Church in America, Moravian Church, Presbyterian Church in U. S. A., Pres-

principles which, it is respectfully submitted, are challenged by the decisions of the courts below enforcing segregation as a result of the fact of race. Those decisions violate, we firmly believe, the constitutional guarantee of equal protection under law and also the free democratic principles and spiritual ideals which we profess as a nation.

The Position of The Federal Council—1946

The Federal Council has repeatedly declared its conviction that segregation enforced by law is a denial of the equal protection of the laws, of the dignity and inherent rights of the individual human being, and of the Christian concept of universal brotherhood. Such segregation, the Council affirms, necessarily predicates inferiority rather than equality; divisiveness instead of fellowship; stigma instead of dignity; prejudice and bias instead of mutual respect and good will; pretense and hypocrisy instead of good faith and sincerity in the social controls of opportunities to achieve an abundant life.

The present instance is, in the opinion of the Council, confirmation that the thesis of "separate but equal facilities" in the matter of public education tends to maintain a permanent pattern of imposed inferiority and subjection.

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byterian Church in U. S., Protestant Episcopal Church, Reformed Church in America, Romanian Orthodox Church of America, Russian Orthodox Church of North America, Seventh Day Baptist General Conference, Syrian Antiochian Orthodox Church of North America, Ukrainian Orthodox Church of America, United Church of Canada, United Lutheran Church (consultative body), United Presbyterian Church.

The Presbyterian Church in the U. S. dissociates itself from this brief by vote of its representatives on the Council's Executive Committee.

The Official Statement approved by The Federal Council of the Churches of Christ in America in March 1946 on the subject of "The Church and Race Relations" declared (among other things):

"The Segregation Pattern Analyzed

"Segregation is the pattern of our American race relations. Segregation in America is the externally imposed separation or division of individual citizens, or groups of citizens, based on race, color, creed or national origin. It is accepted, with some differences of emphasis, in all sections of the country. It is sometimes established and supported by law. In other instances, segregation is almost as rigidly enforced by social custom.

"Segregation in America has always meant inferior services to the minority segregated. This pattern has never been able to secure equal, separate services to the minority segregated. Segregation is always discriminatory.

"Segregation is an expression of the inferiority-superiority pattern of opinions about race held tenaciously by the vast numbers of Americans. Segregation is not only the expression of an attitude; it is also the means by which that attitude is transmitted from one generation to another. Children of our society, observing minorities as we segregate them, cannot easily escape the conclusion that such minorities are inferior.

"Segregation as practiced in America probably has more effect on the racial opinions of the young than formal teachings of the schools about democracy, or of the Church about Christian brotherhood.

"Segregation as applied to our economic system denies to millions of our citizens free access to the means of making a living and sets for them insurmountable obstacles in their efforts to achieve freedom from want.

"In the greatest crisis in our history, segregation made it impossible to utilize fully large sections of our manpower in the armed services and war production. It also seriously limits the contributions of minority groups to the ongoing life of our people in the fields of art, education, science, industry, etc.

"Segregation subjects sections of our population to constant humiliation and forces upon them spiritual and psychological handicaps in every relation of life. This creates a yawning and ofttimes unabridged chasm in the quality of human fellowship and stands in contradiction to the higher American dream. Still more devastating is the moral and spiritual effect upon the majority.

"Segregation handicaps the nation in international relationships. It was a source of great embarrassment to our leaders that we found it difficult to locate an American community where racial practices were acceptable for establishing the headquarters of the United Nations Organization. This is a discouraging factor within our life as a nation as we begin to play our part in the new world unity upon which our future existence depends.

"Political segregation has disfranchised large numbers of our citizens, tending to create unnecessary confusion in dealing with important national issues, creating unreal political divisions and giving rise to a type of political demagoguery that threatens the very existence of democratic institutions.

"Segregation increases and accentuates racial tensions. It is worth noting that race riots in this country have seldom occurred in neighborhoods with a racially mixed population. Our worst riots have broken out along the borders of tightly segregated areas.

"The pattern of racial segregation in America is given moral sanction by the fact that churches and church institutions, as a result of social pressure, have so largely accepted the pattern of racial segregation in their own life and practice * * *.

"The Federal Council of the Churches of Christ in America hereby renounces the pattern of segregation in race relations as unnecessary and undesirable and a violation of the Gospel of love and human brotherhood. Having taken this action, the Federal Council requests its constituent communions to do likewise. As proof of their sincerity in this renunciation they will work for a non-segregated Church and a non-segregated society."

In a later Official Statement on the subject of "The Churches and Human Rights," adopted December 1948, The Federal Council of Churches stated (among other things):

"*Social, Economic and Political Rights*

"These rights, which should be available to all without discrimination as to race, color, sex, birth, social or economic status, or creed, include:

"A. Full opportunity to participate in the economic resources of the community, including:

"1. The right to a standard of living adequate for the welfare and security of the individual and the family.

"2. The right of every employable person to work under decent conditions, for fair compensation, and to be upgraded in keeping with character and ability; or to engage in an individual enterprise or profession.

"3. The right of all persons to organize into labor unions, corporate enterprises, cooperative ventures, and for social action.

"B. Full opportunity to participate on a non-segregated basis in the social and public life of the community, including:

"1. The right to wholesome living space.

"2. The right to move within one's country, and to leave and return to one's country.

"3. The right to educational and professional training and to cultural opportunities.

"4. The right to recreational opportunities and facilities.

"5. The right to participate in the use of community social services.

"6. The right to adequate health services.

"7. The right to the use of transportation on the basis of full equality.

"8. The right to receive equal service from businesses and persons serving the public, such as stores, theaters, hotels and restaurants."

This determined opposition to segregation was also part of a report received and commended to the churches in September 1948 by the First Assembly of the World Council of Churches at Amsterdam, Holland, attended by the representatives of 140 religious denominations. This report stated:

"Man is created and called to be a free being, responsible to God and his neighbor. Any tendencies in State and society depriving man of the possibility of acting responsibly are a denial of God's intention for man and His work of salvation.

• • •

"It (the Church) knows that it must call society away from prejudice based upon race or colour and from the practices of discrimination and segregation as denials of justice and human dignity, but it cannot say a convincing word to society unless it takes steps to eliminate these practices from the Christian community because they contradict all that it believes about God's love for all His children.

• • •

"The Church has always demanded freedom to obey God rather than men. We affirm that all men are equal in the sight of God and that the rights of men derive directly from their status as the children of God. It is presumptuous for the state to assume that it can grant or deny fundamental rights. It is for the state to embody these rights in its own legal system and to ensure their observance in practice.

• • •

"With all the resources at their (the churches') disposal they should oppose enforced segregation on grounds of race or color, working for the progressive recognition and application of this principle in every country."

Segregation, particularly in the matter of educational facilities, is in reality a survival, and in its operation a perpetuation, of the caste system. It is born of the concept of racial superiority and of class dominance which has brought incalculable misery to the human race through the ages. Self-preservation, to say nothing of the stability and sincerity of democratic institutions and of the obligations which men of good will profess, requires that this legacy find no shelter or perpetuation under the sanction of our Constitution and within the body of our law.

We shall not attempt in this brief now to discuss the various judicial decisions which are cited and analyzed in the various briefs submitted in connection with this petition. We recognize that the legalistic aspect of the issue is important and relevant; but we are convinced of the greater relevancy and force of the fundamental principles on which alone our Constitution rests and by which alone it can be sustained. We do not believe that in the human tempest which has been shaking the world for several

decades, our form of government and way of life can permanently endure on the basis of discriminations and segregations which constitute a contradiction of our principles by our actions. It is still true that this country cannot exist half slave and half free.

The convictions, legal, social, ethical and religious, which The Federal Council has set forth in Official Statement, and which it deems an essential part of the mission for which it exists find, we believe, sufficient and controlling expression in the field of constitutional law in the unanimous decision of this Court on May 3, 1948 in *Shelley* v. *Kraemer*, 334 U. S. 1, 23:

> "The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color. Seventy-five years ago this Court announced that the provisions of the Amendment are to be construed with this fundamental purpose in mind."

These profound words constituted the heart and spirit of an historic constitutional decision which struck down enforced segregation, either by public act or private agreement, in the matter of a place to live physically. They apply with far more force and aptness in the matter of a place to live mentally and spiritually. The right to life, liberty and the pursuit of happiness, and the right to enjoy and exercise as an equal the inalienable rights with which every man is endowed by his Creator, is not and cannot be confined to physical existence. Man is not merely

body. He is also and chiefly mind and spirit; and "the life is more than meat, and the body is more than raiment."

Segregation in the matter of a place to live means the ghetto. Segregation in matters of the mind and spirit means second-class citizenship. Both betray a Constitution which, as said by Mr. Justice Murphy in *Oyama* v. *California*, 332 U. S. 633, 663, "embodies the highest political ideals of which man is capable," and "insists that our government, whether state or federal, shall respect and observe the dignity of each individual, whatever may be the name of his race, the color of his skin or the nature of his beliefs." Both betray the very foundations of our democratic way of life and hence also our effort to exert leadership in founding on that way of life a durable peace throughout the world. Both betray what Emil Brunner, in his recent treatise "*Justice and the Social Order*," so truly describes as the "sacred law, which can be appealed to against every inhuman, unjust social order, against any caprice or cruelty on the part of the state."

Hence, we earnestly join in the request that this petition for a writ of certiorari be granted, in order that the inherent issue so overshadowing our American life may be fully discussed, considered and decided in this great tribunal.

Respectfully submitted,

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